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09/919,385	07/31/2001	Ronald F. Woestemeyer	PROS1100-1	3387

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SPRINKLE IP LAW GROUP  
1301 W. 25TH STREET  
SUITE 408  
AUSTIN, TX 78705

EXAMINER
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HARBECK, TIMOTHY M

ART UNIT	PAPER NUMBER
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3692

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/919,385

Applicant(s)

WOESTEMEYER ET AL.

Examiner

Timothy M. Harbeck

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al (Hereinafter Anderson, US PAT 5,9774,396) in view of Newswire (PR Newswire. "net.Genesis Announces Most Valuable Customer <sup>TM</sup> Segmentation Package." New York: Mar 22, 1999. pg 1; 3 pages).

**Re Claim 1:** Anderson discloses a market analysis system comprising:

- A computer processor (FIG 3; Ref 64);
- A computer readable storage medium (FIG 3 Ref 64 "memory");
- A database stored on the computer readable medium comprising aggregate market data (Column 2 line 67-Column 3 line 7); and
- A software program stored on the computer readable medium executable to;
  - Receive a set of transaction data from an electronic exchange (Column 2, lines 46-51);
  - Store the set of transaction data in the database (Column 2 line 67-Column 3 line 7)

- Define a standard pricing group from the aggregate market data (Column 3, lines 65-Column 4 lines 6; and Column 5 lines 55-61); and
- Apply a statistical analysis to the standard pricing group (Column 6, lines 16-22)

Anderson does not explicitly disclose

- Where the market transactions are conducted electronically via the Internet

Newswire discloses "net.Genesis Corp., the leader in e-business intelligence solutions for Internet enabled and Fortune 500 enterprise." Further disclosed is the MVC segmentation package that "empowers e-businesses to quickly identify their best and worst customers." Information derived from MVC's sophisticated visitor segmentation model greatly enhances an e-business ability to gain a holistic view of their best and worst online customers." (See Abstract). It would have been obvious to include the teachings of Newswire to the disclosure of Anderson so that as e-businesses continue to proliferate, so too will the need to evaluate online sales and marketing initiatives. By utilizing Internet sales as well as traditional sales, the system of Anderson can have a more holistic view of customer purchasing information.

**Re Claim 2:** A Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the statistical analysis applied is selected from a group consisting of a demand function analysis, a time series analysis, a correlation analysis, a request for quote analysis and an auction analysis (Column 10, lines 31-53)

**Re Claim 3:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is executable to store a set of results from the statistical analysis in a database (Column 2 line 67-Column 3 line 7)

**Re Claim 4:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is further executable to communicate a set of results of the application of the statistical analysis to a user (Column 11, lines 6-19)

**Re Claim 5:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is executable to communicate the set of results in a format compatible with a revenue management software program (Column 4, lines 19-49; "encoding the data into digital format;" revenue management software in the form of membership cards and promotional literature such as coupons).

**Re Claim 6:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is further executable to communicate the set of results in response to a user request (Column 3 line 65-Column 4 line 6)

**Re Claim 7:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the software program is further executable to return a summary of the set of transaction data (Column 3, lines 65-Column 54 line 6 "retrieve particular types of information...queries may relate to determining purchasing behaviors of retail consumers.")

**Re Claim 8:** Anderson discloses a system for analyzing transactions at an electronic exchange comprising:

- A database storing a set of transaction data (Fig 1; Ref 26; Column 2 line 67-Column 3 line 7);
- A configuration manager operable to define a standard pricing group from the set of transaction data (Column 3, lines 65-Column 4 lines 6; and Column 5 lines 55-61);
- A market analyzer operable to apply a statistical analysis to the standard pricing group (FIG 1; Ref 30,32)

Anderson does not explicitly disclose wherein

- Transaction data is received from the electronic exchange where transactions are conducted electronically via the Internet.

Newswire discloses "net.Genesis Corp., the leader in e-business intelligence solutions for Internet enabled and Fortune 500 enterprise." Further disclosed is the MVC segmentation package that "empowers e-businesses to quickly identify their best and worst customers." Information derived from MVC's sophisticated visitor segmentation model greatly enhances an e-business ability to gain a holistic view of their best and worst online customers." (See Abstract). It would have been obvious to include the teachings of Newswire to the disclosure of Anderson so that as e-businesses continue to proliferate, so too will the need to evaluate online sales and marketing initiatives. By utilizing Internet sales as well as traditional sales, the system of Anderson can have a more holistic view of customer purchasing information.

**Re Claim 9:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the standard pricing group further comprises an aggregation of data from the set of transaction data (Column 5, lines 50-61; "Product clusters; consumer clusters.")

**Re Claim 10:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the statistical analysis applied is selected from a group consisting of a demand function analysis, a time series analysis a correlation analysis, a request for quote analysis and an auction analysis (Column 10, lines 31-53).

**Re Claim 11:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses

- A communications server operable to:
  - Receive a set of transaction from an electronic exchange (Column 2, lines 46-51);
  - Communicate the set of transaction to the market analyzer (FIG 1; 24-26-30-32)
  - Receive a request for the set of results from a supplier (Column 3, lines 65-66 "Specific queries"; and
  - Communicate the set of results to the supplier (Column 3, lines 67-Column 4 line 1 "Retrieve particular types of information from the relational database.")

**Re Claim 12:** Anderson in view of Newswire discloses the claimed system and Anderson further

- An input interface further comprising
  - A configuration interface operable to receive configuration information (Column 2, lines 40-55)
  - A transaction interface operable to receive the set of transaction data (FIG 1 Ref 24-26; consumer data flow); and
  - A request interface operable to receive a request (Column 3, lines 65-66 “input specific queries.”); and
- An output interface (Column 3 line 67-Column 4, line 6; “retrieve specific types of information.”)

**Re Claim 13:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses comprising a configuration manager operable to select a statistical analysis model to apply to the standard pricing group from a set of statistical analysis models and wherein the market analyzer is further operable to apply the selected statistical analysis model to the standard pricing group (Column 6, lines 36-48)

**Re Claim 14:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the configuration manager further comprises:

- A standard pricing group manager operable to define the standard pricing group (Column 5, lines 55-61);
- A model manager operable to define the statistical analysis applied (Column 6 lines 36-43 “Statistical extracts”; and



- A supplier manager operable to manage information regarding suppliers (FIG 1 Ref 20 and 22)

**Re Claim 15:** Anderson discloses the claimed system supra but does not explicitly disclose wherein the configuration manager is operable to define default values and standard parameters for the statistical analysis model. Official Notice is taken that it was notoriously old and well known in the art to provide default values for parameters in statistical models if no direct parameters are available. It would have been obvious to a person of ordinary skill in the art to include this step to Anderson so that useful data can be generated, even in the event that all necessary parameters are not known. By providing default values the user can still be presented with an estimated predictive behavior model as opposed to nothing.

**Re Claim 16:** Anderson in view of Newswire discloses the claimed system and Anderson further comprises a request manager operable to: receive a request from a supplier for a set of results of the application of the statistical analysis; retrieve the set of results from the database; and communicate the results to the supplier (Column 3, lines 65-Column 4 lines 6)

**Re Claim 17:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the request manager is further operable to return a summary of the set of transaction data to the supplier (FIG 12(a); "Transaction Summary").

**Re Claim 18:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses wherein the request manager is further operable to

communicate the set of results in a format compatible with a revenue management software program (Column 4, lines 19-49; "encoding the data into digital format;" revenue management software in the form of membership cards and promotional literature such as coupons)

**Re Claim 19:** Anderson in view of Newswire discloses the claimed system and Anderson further discloses a retrieval manager operable to retrieve the set of results from the database (Column 3 lines 65-Column 4 line 6); and an aggregation manager operable to summarize the set of transaction data (FIG 12(a); "Transaction Summary").

**Re Claim 20 and 21:** Anderson discloses the claimed system supra but does not explicitly disclose the steps further comprising a task manger operable to schedule the application of the statistical analysis and prompt the market analyzer to apply the statistical analysis. Official Notice is taken that it was old and well known in the art at the time of invention to schedule the automatic generation of statistical models for a business at regular intervals so that appropriate tracking of progress and results can be made. It would have been obvious to a person of ordinary skill to include these steps to Anderson so that a user can have data produced, at regular intervals that can be analyzed and compared over time, without having to continuously request this information.

**Re Claims 22-30:** Further method claims would have been obvious to perform from the previously rejected system claims 1-21 and are therefore rejected using the same art and rationale.

**Re Claims 31-36:** Further system claims contain essentially the same limitations as previously rejected system claims 8, 10, 18, 20, 17 and 11 respectively and are therefore rejected using the same art and rationale.

***Response to Arguments***

Applicant's arguments filed 12/21/2006 have been fully considered but they are not persuasive.

Applicant initially contends that Anderson does not disclose a software program stored on a computer readable medium executable to 'receive a set of transaction data from an electronic exchange.' In support the Applicant points to the retail point of sale (POS) exchanges that occur in Anderson. However POS terminals are still 'electronic exchanges,' given the broadest reasonable interpretation of the claim language, as the data gleaned from these POS terminals is done via bar code scanning or magnetic strip reading (Column 3, lines 41-50) and this information is relayed by electronic means to a computer (Column 7, lines 31-63). It thus appears clear that this is an 'electronic exchange.'

It appears that applicant has acknowledged this electronic exchange of Anderson by the amending Claim language to include the limitation of 'where market transactions are conducted electronically via the Internet.' The Newswire reference has thus been added to show the proliferation of e-businesses, and further the use of customer segmentation and analysis in electronic commerce. The examiner has therefore concluded that 'it would have been obvious to include the teachings of Newswire to the disclosure of Anderson so that as e-businesses continue to proliferate, so too will the

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need to evaluate online sales and marketing initiatives. By utilizing Internet sales as well as traditional sales, the system of Anderson can have a more holistic view of customer purchasing information.

Applicant further argues across many claims that Anderson does not disclose a 'software programs' programmed to perform many of the steps in the dependent claims. However it appears that, on the contrary, Anderson explicitly discloses software for both the communication means (Column 7, lines 46-50) as well as the compilation and analysis of the stored data (Column 7, lines 51-64).

The Applicant has piggybacked the aforementioned arguments to a number of other claims and therefore any arguments relating to the electronic exchange, Internet applications or software programs apply equally to these claims.

The applicant also concludes in a number of the arguments that Anderson does not maintain results from a statistical analysis nor have the ability to communicate the results compatible with a revenue management software program (at least claims 3-8). However it appears in plain language that Anderson does exactly this (Column 6, lines 24-48). Applicant repeatedly asks for the examiner to cite the applicability of the cited portion so to satisfy this request the examiner will simply recite the portion of Anderson that reads "Various buying behaviors and patterns may be extracted from the cluster data stored in the consumer stored in consumer purchase repository in the form of statistical extracts and used by retailers along with conventional software market analysis tools to determine statistical patterns (Column 6, lines 36-48)." Thus it appears that Anderson satisfies the claimed limitations.

With respect to the independent argument in claim 5 that Anderson does not disclose a revenue management software program, the examiner again disagrees. The applicant initially states that "at the time of invention, Revenue Management was already a widely accepted discipline for increased revenue in the airline, hospitality, car rental, cruise line, railroad, and television broadcast industries." This statement, in and of itself, appears to be a submission that this limitation was known at the time of invention and would therefore be obvious, as admitted prior art. In addition Anderson has disclosed using 'conventional software analysis tools to determine statistical patterns (Column 6, lines 40-44), which at the time of invention would include the admitted prior art revenue management systems.

Furthermore, as has been stated previously, During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." >The Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard: The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004).

Thus it appears the broad recitation of "a revenue management software program," would include the 'convention software analysis tools' disclosed by Anderson, as well as the information gleaned from the 'smart cards,' which includes 'purchase dates, dollar amounts per purchase, discount amount, total dollar amounts per year and consumer history. (Column 10, lines 34-45). This argument also applies to claim 13, 14, 16-17 and 18, as a 'conventional software market analysis tool to analyze buying behaviors and patterns based on known data extracted from a consumer purchase repository,' would be reasonably interpreted as a selection of a statistical analysis model to apply to the standard pricing group.'

With regards to claim 9, applicant contends that Anderson's frequent shopper system does not appear to categorize beyond a single retailers products and customers. The applicant then cites a portion of the specification, including a portion in parenthesis that was not in the original filing but appears to be an attempt to add new matter. The specification does not contain the part that reads 'provided by various suppliers,' but rather just states the differences in products with no reference to the number of suppliers. In fact the example given in the spec is for a single auction website that provides different products (Page 10). With this in mind the Examiner submits that Anderson discloses this feature in the form of product clusters mentioned in the previous Office Action (also see further info on product clusters in Column 11 and 12).

With regards to claim 19, the applicant claims that 12a is 'irrelevant to the functionality of the aggregation manager as claimed because Anderson fails to describe a request manager as claimed in claim 16. Again, the language is fairly clear in Anderson that 'a user interface at the supervisory retail processor allows a retailer for specific queries to the system to retrieve particular types of information (Column 3, lines 65-67)." It is requested that applicant discern the difference between a 'request from a supplier' as disclosed in claim 16 and the 'specific queries from a retailer' as disclosed by Anderson as it appears clear that this is the same thing.

With regards to Claims 20 and 21 the examiner has taken Official Notice that the fact was well known. Applicant contends that Anderson does not appear to suggest any desirability for the retailers to forego target specific queries in favor of 'automatic generation of statistical models for a business at regular intervals.' However a further reading of Anderson reveals that "Queries may also be made without knowledge of SQL commands by the retailers through the use of predefined scripts employed through menu options (Column 10, lines 58-65). Therefore it appears Anderson, by itself, supports the Examiners previous contention and can be relied upon in support of the Official Notice.

It is believed that the Examiner has addressed all the appropriated arguments submitted by applicant. It is noted that many arguments follow a pattern of claiming that Anderson fails to disclose a certain limitation that the present invention allegedly does, followed by a statement that "The Examiner has not provided any

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explanation as to the applicability of the cited portion of Anderson.” However, the examiner has reviewed the cited portions of Anderson and determined that they are relevant to the rejections at hand. It thus appears that Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The examiner has gone to the effort of citing pertinent matter in the prior art. It is unclear what the applicant is requesting in regards to an “explanation of applicability.” Statements as to why the claimed invention is different than the cited prior art is much more valuable than a blanket statement that they are not the same. In future communications it is requested that applicant, as required, specifically pointing out how the language of the claims patentably distinguishes them from the references with respect to each and every claim that is argued.

In summary, the applicant has added a brief amendment to the independent claims that the transactions are conducted via the Internet. As a result Examiner has discovered the Newswire reference that he believes discloses this limitation as well as provides motivation for a combination with Anderson. The rejections are therefore maintained.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
*Art 3692*